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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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CyberSoft, Inc. 1508 Butler Pike Conshohocken, PA 19428-1322				
EXAMINER YIGDALL, MICHAEL J				
ART UNIT		PAPER NUMBER		
2122		8		

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,173

Applicant(s)

RADATTI, PETER V.

Examiner

Michael J. Yigdal

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4 and 8-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office action is in reply to Applicant's response and amendment dated 6 February 2004. Claims 4 and 8-21 remain pending.

Drawings

2. The objections to Figures 1-4 are withdrawn in view of the corrected drawing sheets.

Claim Rejections - 35 USC § 112

3. The rejection of claim 9 and its dependent claim 10 under 35 U.S.C. 112, second paragraph, is withdrawn in view of the amendment to claim 9.

Response to Arguments

4. Applicant's arguments have been fully considered but they are not persuasive.

Applicant contends that Pedrizetti "does not show ... that a hash is transferred from server to client" and "nowhere transmits a hash of a file" (see page 6, paragraph 6). However, Applicant acknowledges that Pedrizetti does transmit a bitmap table, which is populated according to hash values (see page 7, paragraphs 1-2). Moreover, Pedrizetti discloses using a hash function to generate this table of bit entries and transferring the table to the client (see column 1, lines 45-49).

Applicant also contends, "it is not the hash values in Pedrizetti that are sent from the server to the client -- it is the bitmap sparse table that is sent from a server to a client" (see page 7, paragraph 3). Indeed, this table is a hash table (see Pedrizetti, column 4, lines 53-58), and each position in the table corresponds to a hash value (see column 5, lines 27-34).

Art Unit: 2122

Applicant also contends that Pedrizetti “neither transmits a hash, nor compares a hash with a target” (see page 9, paragraph 2). However, as presented above, Pedrizetti discloses transferring a hash table to the client or target (see column 1, lines 45-49). Pedrizetti further discloses checking or comparing the hash table with hash values determined at the client or target (see column 1, lines 49-52).

Applicant states that Aviani does not teach, suggest, or disclose the limitations of independent claim 8 and so cannot serve as an anticipatory reference to claims 16 and 17. However, it was stated in the Office action mailed 6 October 2003 (Paper No. 5), with regard to claims 16 and 17:

These claims are statutory only because they depend (indirectly) from claim 8, which is statutory. If these claims were to be considered independent claims, they would be non-statutory under 35 U.S.C. 101 as claiming data per se. Furthermore, claims 16 and 17 are product-by-process claims for which patentability is determined based on the product itself and not on the method of production. See MPEP § 2113.

5. In response to Applicant’s argument that the references fail to show certain features of Applicant’s invention, it is noted that the features upon which applicant relies (i.e., the alleged distinction between hash tables and hash values) are not recited in the rejected claim(s). The claim(s) recite, simply, “a hash” (see independent claims 4, 8 and 21, for example). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

6. The rejections of claims 4 and 8-21 under 35 U.S.C. 102, as set forth in the Office action mailed 6 October 2003 (Paper No. 5), are presented below for completeness.

Claim Rejections - 35 USC § 102

7. Claims 4 and 8-21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,151,708 to Pedrizetti et al. (hereinafter Pedrizetti).

With respect to original claim 4, Pedrizetti discloses an apparatus for transmitting data to a target (see the abstract) comprising:

(a) a means for updating, present on a distribution media, and further comprising data, data information and a hash of said data information (see FIG. 1 and column 1, lines 41-65, which shows a system for updating software from a distribution server, comprising update data, information based on the update, and a hash table based on the information);

(b) a means for transmission between said distribution media and said target (see item 104 of FIG. 1 and column 2, lines 57-61, which shows a means for transmission between the server and client);

(c) a means for obtaining data information from said distribution media (see column 1, lines 52-56, which shows that update data information is obtained by the client from the distribution server); and

(d) a means for processing said hash of said data information (see FIG. 5 and associated text, and column 1, lines 48-59, which shows that the client processes the information to determine the availability of updates);

whereby said means for obtaining data information from said distribution media obtains said hash from said means for updating present on said distribution media, which hash is transmitted through said means for transmission to said means for processing, and which upon receipt of said hash of said data information compares said hash with said target in order to determine if said data should be transmitted to said target (see column 1, lines 48-59, which shows that the hash table and the update data information is transferred to the client for processing and is compared with the client to determine whether or not the actual update data should be transferred as well).

With respect to original claim 8, Pedrizetti discloses a method for transmitting data to a target (see the abstract) comprising the steps of:

(a) transmitting a hash of data information from a first distribution media to said target (see column 1, lines 45-49, which shows that a hash table based on the update data information is transferred to the client from the distribution server);

(b) comparing said hash in order to determine if data information should be transmitted to said target (see column 1, lines 49-56, which shows that the hash table is compared with the client to determine whether or not additional information should be transferred as well);

(c) transmitting said data information from a second distribution media, if necessary, to said target (see column 1, lines 52-56, which shows that update data information is transferred to the client if needed; see also column 6, lines 14-17, which shows that a third-party server, i.e. a second distribution media, may be used);

(d) comparing said data information with said target in order to determine if said data should be transmitted to said target (see column 1, lines 52-59, which shows that the update data

information is compared with the client to determine whether or not the actual update data should be transferred as well).

With respect to amended claim 9, Pedrizetti discloses a method as in claim 8 further comprising the step of obtaining data information from said second distribution media (see column 1, lines 52-56, which shows that update data information is obtained by the client from the distribution server).

With respect to original claim 10, Pedrizetti discloses a method as in claim 9 wherein the step of obtaining data information from said server further comprises the step of using an http address to obtain data information (see column 2, lines 61-65, which shows that an Internet connection may be used in conjunction with a Web browser for the software update system; see also FIG. 6A, which shows a Web browser using an http address).

With respect to original claim 11, Pedrizetti discloses a method as in claim 8, wherein the first and second distribution media are the same (see item 100 of FIG. 1, which shows the software update system using a single server).

With respect to original claim 12, Pedrizetti discloses a method as in claim 8, wherein either the first and second distribution media at least partially comprises a network (see column 2, lines 57-58, which shows a server in communication with a client over a communications pathway, i.e. in a network).

With respect to original claim 13, Pedrizetti discloses a method as in claim 8 further comprising the step of preparing said data information from attributes of said data (see column 5,

lines 50-60, which shows an index file having update data information based on attributes of the actual update data, such as version number and package name; note that the step of preparing the index file is inherent to the system).

With respect to original claim 14, Pedrizetti discloses a method as in claim 13 wherein said data comprises one or more software product data files (see column 1, lines 41-45, which shows that software program updates are transferred from the distribution server to the client).

With respect to original claim 15, Pedrizetti discloses a method as in claim 13 further comprising the step of preparing said hash from said data information (see column 1, lines 45-48, which shows a hash table prepared from the update data information).

With respect to original claim 16, Pedrizetti discloses data information prepared by the method of claim 13 (see column 5, lines 50-60, which shows an index file having update data information based on attributes of the actual update data).

With respect to original claim 17, Pedrizetti discloses a hash prepared by the method of claim 15 (see column 1, lines 45-48, which shows a hash table prepared from the update data information).

With respect to original claim 18, Pedrizetti discloses a method as in claim 8 further comprising the steps of transmitting said data from a third distribution media to said target (see column 1, lines 56-59, which shows that update data is transferred to the client from the distribution server; see also column 6, lines 14-17, which shows that a third-party server, i.e. a third distribution media, may be used).

With respect to original claim 19, Pedrizetti discloses a method as in claim 18 wherein the third distribution media at least partially comprises a network (see column 2, lines 57-58, which shows a server in communication with a client over a communications pathway, i.e. in a network).

With respect to original claim 20, Pedrizetti discloses a method as in claim 19 further comprising the step of editing data on said target in order to update data on said target (see column 3, lines 29-41, which shows that data on the client is edited and updated).

With respect to original claim 21, Pedrizetti discloses a method for transmitting data to a target (see the abstract) comprising the steps of:

(a) providing a software product (see column 1, lines 41-45, which shows that software program updates are provided on a server);

(b) preparing data information about said software product (see column 5, lines 50-60, which shows an index file having information based on the software update; note that the step of preparing the index file is inherent to the system);

(c) preparing a hash of data information about said software product (see column 1, lines 45-48, which shows a hash table prepared from the update data information);

(d) storing said software product on a first distribution media (see item 114 of FIG. 1, which shows the software program update data stored on a server);

(e) storing said data information on a second distribution media (see column 6, lines 14-17, which shows that a third-party server, i.e. a second distribution media, may be used for storage);

(f) storing said hash of data information on a third distribution media (see column 6, lines 14-17, which shows that a third-party server, i.e. a third distribution media, may be used for storage);

(g) obtaining data information about said software product (see column 1, lines 52-56, which shows that information about the software updates is obtained by the client);

(h) transmitting said hash of data information to said target (see column 1, lines 45-49, which shows that a hash table based on the update data information is transferred to the client);

(i) comparing said hash in order to determine if data information should be transmitted to said target (see column 1, lines 49-56, which shows that the hash table is compared with the client to determine whether or not additional information should be transferred as well);

(j) transmitting said data information, if necessary, to said target (see column 1, lines 52-56, which shows that update data information is transferred to the client if needed);

(k) comparing said data information with said target in order to determine if said data should be transmitted to said target (see column 1, lines 52-59, which shows that the update data information is compared with the client to determine whether or not the actual update data should be transferred as well);

(l) transmitting said data, if necessary, to said target (see column 1, lines 56-59, which shows that update data is transferred to the client if needed); and

(m) editing said data on said target in order to update data on said target (see column 3, lines 29-41, which shows that data on the client is edited and updated).

8. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,950,205 to Aviani.

These claims are statutory only because they depend (indirectly) from claim 8, which is statutory. If these claims were to be considered independent claims, they would be non-statutory under 35 U.S.C. 101 as claiming data per se. Furthermore, claims 16 and 17 are product-by-process claims for which patentability is determined based on the product itself and not on the method of production. See MPEP § 2113.

With respect to claim 16, Aviani discloses data information (see column 6, lines 1-5, which shows information based on the properties of a file, i.e. data information).

With respect to claim 17, Aviani discloses a hash (see column 6, lines 17-19).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 2122

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (703) 305-0352.

The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MY

Michael J. Yigdall
Examiner
Art Unit 2122

mjy
April 19, 2004



TUAN DAM
SUPERVISORY PATENT EXAMINER